June 1, 1931 (R. 102). The petition for the writ of certiorari was filed September 1, 1931, and was granted October 26, 1931 (R. 103). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

Question Presented.

Is the income derived from the operation by the lessee of an oil and gas lease upon the common school lands of the State subject to income taxes of the Federal government?

Statutes Involved.

The statutes involved are set forth in the Appendix, page 17, *infra*.

Statement.

As a condition of admission into the Union, Oklahoma, under the Enabling Act, was required by Congress to make provision in its Constitution for a system of common schools, and for the support and benefit of such system of schools granted to the State certain lands, with the proviso that such of said lands as were valuable for minerals should not be sold, but might be leased for periods of five (5) years, the proceeds to be paid to the permanent school fund (R. 26). Act of June 16, 1906, Sections 3, 7, 8, 9 and 22, c. 3335, 34 Stat. 267, pp. 17-19, *infra*. Oklahoma accepted the grant of school lands, and in compliance with the provisions of the Enabling Act provided in its Consti-

tution for a common school system and pledged its faith to preserve the lands and moneys derived therefrom as a "sacred trust" and to keep the same for the uses and purposes for which they were granted; and created a Commission in the executive branch of State government charged with the sale, rental, disposal and management of said school lands and of the funds and proceeds derived therefrom under rules and regulations prescribed by the Legislature. Section 32, Article 6; Sections 1, 2 3, Article 11; Sections 1, 4 and 5, Article 13, and Section 2, Art. 17, Constitution of Oklahoma, pp. 19-21, *infra*. Legislative provision was made for leasing the lands containing oil and gas and for the payment of the proceeds into the permanent school fund. Sections 9401, 9415-9423, 9424-9430, Compiled Oklahoma Statutes of 1921, pp. 21-28, *infra*.

Certain of the granted lands were leased by the State of Oklahoma to respondent in January, 1914 (R. 27). Said lease was renewed in March, 1919 (R. 34, 59-95).

The Commissioner of Internal Revenue assessed taxes upon respondent's net income derived from the sale of oil and gas produced from the leased lands during 1917, 1918 and 1919 (R. 25). The Board of Tax Appeals sustained the action of the Commissioner (R. 50; 14 B. T. A. 1214). The Court of Appeals of the District of Columbia reversed the decision of the Board.

The Interest of the State of Oklahoma

is to obtain the largest possible bonus, rental and royalty on every lease for oil and gas purposes covering school lands of the State. A bidder for a lease, if he be definitely assured that income derived from the sale of oil and gas produced under a State school land lease will not be subject to the Federal income tax, will offer a larger bonus, higher rentals, and a greater royalty. The State, in discharging the obligations devolved upon it with respect to the sale, rental, disposal and management of the school lands of the State and preservation of the money derived therefrom for the benefit of its common school system, is in duty bound to obtain by the use of every legitimate effort and means in leasing said lands for oil and gas purposes the greatest bonus, highest rentals, and largest royalty possible. The State desires as its primary purpose to obtain the greatest return possible from leases of its school lands—not the enrichment of its lessees. If the United States may tax the net income of a lessee derived from the sale of oil and gas produced under lease covering State school lands, such tax upon such income will constitute a direct hamper upon the efforts of the State to make the best terms for its wards—the children of the public schools of the State.

The extent to which oil and gas exist in the State school lands is, of course, problematical. The Commis-

sioners of the Land Office have furnished us with the following data: There are approximately 650,000 acres of State school land of some prospective oil and gas value, not leased at this time. During the past five years leases for oil and gas purposes on school lands have been executed as follows: 1926, 287 leases, covering 83,128 acres; 1927, 131 leases, covering 28,517 acres; 1928, 167 leases, covering 29,591 acres; 1929, 137 leases, covering 16,029 acres, and 1930, 198 leases, covering 41,369 acres. In view of the foregoing data we believe it justifiable to assert that the State is continually leasing school lands for oil and gas purposes, and such will be the case for many years to come.

Point Argued.

Gillespie v. *Oklahoma,* 257 U. S. 501, controls the instant case.

BRIEF AND ARGUMENT.

Gillespie v. *State of Oklahoma,* 257 U. S. 501, dealt with the right of the State to levy and collect a State income tax upon the net income of persons derived from the operation of leases on restricted lands. The Court in the first syllabus held:

> "The net income derived by a lessee from sales of his share of oil and gas received under leases of restricted Creek and Osage lands, which constitute him in effect *an instrumentality used by the United States in fulfilling its duties to the Indians,* can not

be taxed by a State. P. 504. *Choctaw, Oklahoma & Gulf, R. R. Co.* v. *Harrison*, 235 U. S. 292; *Indian Territory Illuminating Oil Co.* v. *Oklahoma*, 240 U. S. 522."

At page 505 in the opinion the Court said:

"In cases where the principal is absolutely immune from interference an inquiry is allowed into the sources from which net income is derived and if a part of it comes from such a source the tax is *pro tanto* void; *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U. S. 429, 158 U. S. 601; a rule lately illustrated by *Evans* v. *Gore*, 253 U. S. 245; and applied in a case somewhat like the present by the Supreme Court of Hawaii, *Oahu Ry. & Land Co.* v. *Pratt*, 14 Hawaii 126. * * * ."

And at page 504 in the opinion the Court reviewed prior authorities as follows:

"In *Choctaw, Oklahoma & Gulf R. R. Co.* v. *Harrison*, 235 U. S. 292, it was held that such a lessee could not be taxed on the gross sales of coals from Choctaw and Chickasaw mines, when the tax was in addition to the taxes collected upon an ad valorem basis. In *Indian Territory Illuminating Oil Co.* v. *Oklahoma*, 240 U. S. 522, it was held that a similar lessee could not be taxed upon the value of an Osage oil lease. Subsequently, the principle was applied *per curiam* to gross production taxed under a later statute of 1916, without reference to the fact that the taxes, instead of being in addition to, were in lieu of all taxes upon property rights. *Howard* v. *Gypsy Oil Co.*, 247 U. S. 503; *Large Oil Co.* v. *Howard*, 248 U. S. 549."

In *Jaybird Mining Co.* v. *Weir*, 271 U. S. 609, 612, 613, the mining company had a lease on restricted Indian land

on terms which provided for the payment of royalties on a percentage of the gross proceeds derived from the sale of ores mined. The local taxing authorities undertook to tax ad valorem lead and zinc ores mined by the company in 1920, and which were in its bins on the land January 1, 1921. In disposing of the case the Court held:

> "The Quapaw Indians are under the guardianship of the United States. The land and Indian owners are bound by restrictions specified in the patent and the acts referred to. It is the duty and established policy of the government to protect these dependents in respect to their property. The restrictions imposed are in furtherance of that policy. *United States* v. *Noble*, 237 U. S. 74, 59 L. ed. 844, 35 Sup. Ct. Rep. 532; *Goodrum* v. *Buffalo*, 89 C. C. A. 525, 162 Fed. 817. The lessee is an agency or instrumentality employed by the government for the development and use of the restricted land and to mine ores therefrom for the benefit of its Indian wards. *Choctaw, O. & G. R. Co.* v. *Harrison*, 235 U. S. 292, 59 L. ed. 234, 35 S. Ct. 27. It is elementary that the Federal government in all its activities is independent of state control. This rule is broadly applied. And without congressional consent no Federal agency or instrumentality can be taxed by state authority. 'With regard to taxation, no matter how reasonable, or how universal and undiscriminating, the state's inability to interfere has been regarded as established since *McCulloch* v. *Maryland*, 4 Wheat. 316, 4 L. ed. 579.' *Johnson* v. *Maryland*, 254 U. S. 51, 55, 65 L. ed. 126, 128, 41 Sup. Ct. Rep. 16. And see *Farmers' & M. Bank* v. *Minnesota*, 232 U. S. 516, 58 L. ed. 706, 34 Sup. Ct. Rep. 354; *Choctaw, O. & G. R. Co.* v. *Harrison, supra; Gillespie* v. *Oklahoma*, 257 U. S. 501, 505, 66 L. ed. 338, 340, 42 Sup. Ct. Rep. 171."

In *Indian Territory Illuminating Oil Co.* v. *The State of Oklahoma,* 240 U. S. 522, the Court held:

> "A tax upon a lease made is a tax upon the power to make the lease. Leases that cannot be taxed as an entity cannot be taxed vicariously by taxing the stock of the corporation owning them where the only value of the stock is the value of the leases.
>
> "Oil leases of land in Oklahoma made by the Osage tribe of Indians under authority of the Acts of February 28, 1891, and March 3, 1905, are under the protection of the Federal government, and the lessee is a Federal instrumentality, and the State cannot, therefore, tax its interest in the leases either directly, or as the leases are represented by the capital stock of the corporation owning them. *Choctaw & Gulf R. R.* v. *Harrison,* 235 U. S. 292."

In the above cited cases the United States through agents and instrumentalities was carrying out duties and policies which it had assumed as guardian to its Indian wards, and denied the State in *Gillespie* v. *State, supra,* the privilege of taxing profits of the leases, and said:

> "* * * A tax upon such profits is a direct hamper upon the efforts of the United States to make the best terms that it can for its wards."

The source of the authority and the sovereignty of the United States over the Indians is stated in Mills' Oklahoma Indian Land Laws (2d ed.), Chapter 1, Section 5, as follows:

> "Such authority of the general government does not emanate from any particular section of the Constitution and is not derived from the provision granting it 'power to regulate commerce with foreign na-

tions, and among the several States and with the Indian tribes.' It is much broader than that. It is an inherent one, arising from its political relations with those dependent people. This sovereignty of the government is exercised through Congress as the instrument established by the Constitution for the expression of its legislative will. Justice Miller in *United States* v. *Kagama,* 118 U. S. 375, has outlined the source of the authority of the Federal government over the Indian tribes as follows:

" 'The power of the general government over these remnants of a race, once powerful, now weak and diminished in numbers, is necessary to their protection as well as to the safety of those among whom they dwell. It must exist in that government because it never has existed anywhere else, because the theatre of its exercise is within the geographical limits of the United States, because it has never been denied, and because it alone can enforce its law on all the tribes.'

"The tribes were declared by Chief Justice Marshall in *Cherokee Nation* v. *Georgia,* 5 Pet. 9, to be in a 'state of pupilage,' and their relation to the United States to be that of a ward to his guardian. Such designation has been generally adopted by the courts as expressive of the authority of the United States over the Indian tribes, who are usually referred to as 'wards of the Nation,' 'pupils,' 'local dependent communities.' "

The establishment and maintenance of a system of public schools, State colleges and universities by the State of Oklahoma in conformity to its Constitution and its laws are essential governmental functions. *School District* v. *Zediker,* 4 Okla. 599, 603; *Board of Education* v. *State,* 26 Okla. 366, 370; *State ex rel.* v. *Ross,* 76 Okla. 11; *Consolidated School District No. 1* v. *Wright,* 128 Okla. 193;

Claybrook v. *City of Owensboro*, 23 Fed. 634; *Scown* v. *Czarnecki* (Ill.), 106 N. E. 276, 279. In *City of New Orleans* v. *Salmon Brick & Lumber Company*, 135 La. 827, 835, the court said:

> "The education of the youths of a state is one of the functions of government, and the public school system is a department of the government. Education insures domestic tranquility, provides for the common defense, promotes the general welfare, and it secures the blessings of liberty to ourselves and our posterity. It has ever been recognized as a function of government by all the states of the Union. The United States government has always granted aid and support to the public schools of the several states of the Union. • • •
>
> "Public schools, their property and their funds, are parts of the government itself, and are therefore public property. And thus it is not subject to taxation — state, parish, or municipal — or to seizure, • • • ."

The school lands of the State of Oklahoma are, by virtue of the provisions of the Oklahoma Enabling Act and the Constitution of Oklahoma, held by the State in trust for the education of the youth of the State.

Since the establishment and maintenance of a system of public schools by the State are essential governmental functions, its transactions with reference to the lands owned and devoted exclusively to school purposes and the means and instrumentalities employed by it in performing this function fall within the class which the

United States cannot tax consistently with the constitutional principle.

Dobbins v. *Commissioners of Erie County*, 16 Pet. 435, 448, 449.
Collector v. *Day*, 11 Wall. 113, 124.
Western Union Telegraph Co. v. *Texas*, 105 U. S. 460, 466.
Williams v. *City of Talladega*, 226 U. S. 404, 418-419.
Choctaw, Oklahoma & Gulf R. R. Co. v. *Harrison*, 235 U. S. 292.
Indian Territory Illuminating Oil Co. v. *State of Oklahoma*, 240 U. S. 522.
Howard v. *Gypsy Oil Co.*, 247 U. S. 503.
Large Oil Co. v. *Howard*, 248 U. S. 549.
Gillespie v. *State of Oklahoma*, 257 U. S. 501.
Jaybird Mining Co. v. *Weir*, 271 U. S. 609.
Panhandle Oil Co. v. *Mississippi, ex rel. Knox*, 277 U. S. 218.
Indian Motocycle Co. v. *United States*, 283 U. S. 570, 575.

In *The Collector* v. *Day*, 11 Wall. 113, 124, 127, the Court said:

> "The general government, and the States, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The former in its apppropriate sphere is supreme; but the States within the limits of their powers not granted, or, in the language of the tenth amendment, 'reserved', are as independent of the general government as that government within its sphere is independent of the States.
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> * * * * * * * * * *
>
> " * * * It is admitted that there is no express provision in the Constitution that prohibits the general government from taxing the means and instrumentali-

ties of the States, nor is there any prohibiting the States from taxing the means and instrumentalities of that government. In both cases the exemption rests upon necessary implication, and is upheld by the great law of self-preservation; as any government, whose means employed in conducting its operations, if subject to the control of another and distinct government, can exist only at the mercy of that government. * * * ."

In *Indian Motocycle Co.* v. *United States*, 283 U. S. 570, 575, the Court, in holding that the Federal government could not impose and collect a manufacturer's excise tax upon the sale of motorcycles to the police department of a municipality, said:

"It is an established principle of our constitutional system of dual government that the instrumentalities, means and operations whereby the United States exercises its governmental powers are exempt from taxation by the States, and that the instrumentalities, means and operations whereby the states exert the governmental powers belonging to them are equally exempt from taxation by the United States. This principle is implied from the independence of the national and state governments within their respective spheres and from the provisions of the Constitution which look to the maintenance of the dual system. *Collector* v. *Day* (*Buffington* v. *Day*), 11 Wall. 113, 125, 127, 20 L. ed. 122, 126, 127; *Willcutts* v. *Bunn*, 282 U. S. 216, 224, 225, *ante*, 304, 306, 71 A. L. R. 1260, 51 S. Ct. 125. Where the principle applies it is not affected by the amount of the particular tax or the extent of the resulting interference, but is absolute. *McCulloch* v. *Maryland*, 4 Wheat. 316, 430, 4 L. ed. 579, 607; *United States* v. *Baltimore & Ohio Railway Company*, 17 Wall. 322, 327, 21 L. ed. 597, 599; *Johnson* v. *Maryland*, 254 U. S. 51, 55, 56, 65 L. ed. 126, 128, 129, 41 S. Ct. 16; *Gillespie* v. *Oklahoma*,

257 U. S. 501, 505, 66 L. ed. 338, 340, 42 S. Ct. 171; *Crandall* v. *Nevada*, 6 Wall. 35, 44-46, 18 L. ed. 745, 747, 748. * * * ."

Employing the language used by the Court of Appeals of the District of Columbia in disposing of this case below, 50 Fed. (2d) 998, 1001, 1002:

"We are unable to observe any difference in fact, or to perceive any distinction in principle, between the Gillespie case and that under consideration. In both there were oil lands. In the one case they were held by the Federal government for the benefit of the Indians; in the other by the State for the benefit of its school children, white and Indian. In each there was a lease on a royalty basis; in each the lessee was a corporation or private person; and in each the tax imposed sought to reach alone its or his profits from the operation of the lease. It is obvious, therefore, that the only difference in the facts is that in the one case the person sought to be taxed was an instrumentality of the Federal government, and in the other the State government. If the tax was invalid in the one, it seems to us it must be invalid in the other, for, as we have already seen, the two governments stand upon an equality in the right of exemption of their respective instrumentalities from taxation. Unless, therefore, there is a higher and different obligation on the Federal government in the protection of the interests of the Indians than is on a State in the education of its youth, the principle as it applies to the one must, we think, apply equally to the other. There can be no doubt that the school lands held by the State of Oklahoma in trust for the education of the youth of that State are as immune from taxation by the Federal government as the lands held by the Federal government for the Indians are immune from State taxation. If, therefore, the lessee of restricted Indian lands is a governmental instrumentality, it seems to us necessarily to follow that the lessee of school lands of the State, under identical conditions,

is a governmental instrumentality, and since, as the Supreme Court said in the Gillespie case, the principle that invalidates a tax upon the leases likewise invalidates a tax upon the profits of the lessee, it must follow, we think, that the income from the leases cannot be taxed in the one case any more than in the other. * * * While it may be true that the United States has no right to transact private business, and while it may also be true that when it enters into competition with private business, as it has in the operations of the Shipping Board and the Housing Corporation, all its acts in connection therewith are of a governmental character, and while it may be equally true that a State may engage in private business, the fact is that, in the exploitation of oil lands, like those in this and the Gillespie case, both the State and Federal governments are using property earmarked with a governmental purpose, in the pursuit of a duty enjoined upon each equally to create and preserve a fund in the one case for the Indians as wards of the nation, and in the other for the school children as wards of the State. It is, we think, the purpose, rather than the thing, which controls, but, if this is not correct, then the thing, i. e., the sale of the oil, is, in the case of the Federal government, identically like that in the case of the State government, and it cannot be said that the one government can engage in what is ordinarily designated commerce and insist that because of its restricted powers it is engaged in the performance of a governmental function, and deny to a State in the same circumstances the same character, or classify its identical activity, because of its less limited powers, in a different category."

Conclusion.

The decision of the court below should be affirmed.

Respectfully submitted,

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APPENDIX

Revenue Act of 1916, c. 463, 39 Stat. 756:

"Sec. 10. That there shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources by every corporation, joint-stock company or association, or insurance company, organized in the United States, no matter how created or organized, but not including partnerships, a tax * * *

"Sec. 11. (b) There shall not be taxed under this title any income derived * * * from the exercise of any essential governmental function accruing to any State * * *."

Revenue Act of 1918, c. 18, 40 Stat. 1057, 1065, 1077:

"Sec. 233. (a) That in the case of a corporation subject to the tax imposed by section 230 the term 'gross income' means the gross income as defined in section 213, * * *."

"Sec. 213. That for the purposes of this title * * * the term 'gross income'—

"(a) Includes gains, profits, and income derived * * * from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *."

Act of June 16, 1906, c. 3335, 34 Stat. 267:

"Sec. 3. Fifth. That provisions shall be made for the establishment and maintenance of a system of

public schools, which shall be open to all the children of said State and free from sectarian control; * * *

"Sec. 7. That upon the admission of the State into the Union, sections numbered sixteen and thirty-six, in every township in Oklahoma Territory, and all indemnity lands heretofore selected in lieu thereof, are hereby granted to the State for the use and benefit of the common schools; * * *

"There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of five million dollars for the use and benefit of the common schools of said State in lieu of sections sixteen and thirty-six, and other lands of the Indian Territory. * * *

"Sec. 8. * * *

"Where any part of the lands granted by this Act to the State of Oklahoma are valuable for minerals, which terms shall also include gas and oil, such lands shall not be sold by the said State prior to January first, nineteen hundred and fifteen; but the same may be leased for periods not exceeding five years by the State officers duly authorized for that purpose, such leasing to be made by public competition after not less than thirty days' advertisement in the manner to be prescribed by law, and all such leasing shall be done under sealed bids and awarded to the highest responsible bidder. The leasing shall require and the advertisement shall specify in each case a fixed royalty to be paid by the successful bidder, in addition to any bonus offered for the lease, and all proceeds from leases shall be covered into the fund to which they shall properly belong, and no transfer or assignment of any lease shall be valid or confer any right in the assignee without the consent of the proper State authorities in writing. * * *.

"Sec. 9. That said sections sixteen and thirty-six, and lands taken in lieu thereof, herein granted for

the support of the common schools, if sold, may be appraised and sold at public sale in one hundred and sixty acre tracts or less, under such rules and regulations as the Legislature of the said State may prescribe, preference right to purchase at the highest bid being given to the lessee at the time of such sale, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of such schools. But said lands may, under such regulations as the Legislature may prescribe, be leased for periods not to exceed ten years; and such lands shall not be subject to homestead entry or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only."

"Sec. 22. That the constitutional convention provided for herein shall, by ordinance irrevocable, accept the terms and conditions of this Act."

Constitution of Oklahoma, Section 5, Article 1:

"Provisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of the State and free from sectarian control; and said schools shall always be conducted in English. Provided, that nothing herein shall preclude the teaching of other languages in said public schools. And provided, further, that this shall not be construed to prevent the establishment and maintenance of separate schools for white and colored children."

Section 32, Article 6:

"The Governor, Secretary of State, State Auditor, Superintendent of Public Instruction, and President of the Board of Agriculture, shall constitute the Commissioners of Land Office, who shall have charge of the sale, rental, disposal, and managing of the school lands and other public lands of the State, and of the

funds and proceeds derived therefrom, under rules and regulations prescribed by the Legislature."

Article 11:

"Section 1. The State hereby accepts all grants of lands and donations of money made by the United States under the provisions of the Enabling Act, and any other Acts of Congress, for the uses and purposes and upon the conditions, and under the limitations for which the same are granted or donated; and the faith of the State is hereby pledged to preserve such lands and moneys and all moneys derived from the sale of any of said lands as a sacred trust, and to keep the same for the uses and purposes for which they were granted or donated.

"Section 2. All proceeds of the sale of public lands that have heretofore been or may be hereafter given by the United States for the use and benefit of the common schools of this State, all such per centum as may be granted by the United States on the sales of public lands, the sum of five million dollars appropriated to the State for the use and benefit of the common schools in lieu of sections sixteen and thirty-six, and other lands of the Indian Territory, the proceeds of all property that shall fall to the State by escheat, the proceeds of all gifts or donations to the State for common schools not otherwise appropriated by the terms of the gifts, and such other appropriations, gifts, or donations as shall be made by the Legislature for the benefit of the common schools, shall constitute the permanent school fund, the income from which shall be used for the maintenance of the common schools in the State. The principal shall be deemed a trust fund held by the State, and shall forever remain inviolate. It may be increased, but shall never be diminished. The State shall reimburse said permanent school fund for all losses thereof which may in any manner occur, and no portion

of said fund shall be diverted for any other use or purpose.

"Sec. 3. The interest and income of the permanent school fund, the net income from the leasing of public lands which have been or may be granted by the United States to the State for the use and benefit of the common schools, together with any revenues derived from taxes authorized to be levied for such purposes, and any other sums which may be added thereto by law, shall be used and applied each year for the benefit of the common schools of the State, and shall be, for this purpose, apportioned among and between all of the several common school districts of the State in proportion to the school population of the several districts, and no part of the fund shall ever be diverted from this purpose, or used for any other purpose than the support and maintenance of common schools for the equal benefit of all the people of the State."

Article 13:

"Section 1. The Legislature shall establish and maintain a system of free public schools wherein all the children of the State may be educated."

"Section 4. The Legislature shall provide for the compulsory attendance at some public of other school, unless other means of education are provided, of all the children of the State who are sound in mind and body, between the ages of eight and sixteen years, for at least three months in each year.

"Section 5. The supervision of instruction in the public schools shall be vested in a Board of Education, whose powers and duties shall be prescribed by law. The Superintendent of Public Instruction shall be President of the Board. Until otherwise provided by law, the Governor, Secretary of State, and Attor-

ney General shall be *ex-officio* members, and with the Superintendent, compose said Board of Education."

Article 17:

"Section 2. There are hereby created, subject to change by the Legislature, in and for each organized county of this State, the office of Judge of the County Court, County Attorney, Clerk of the District Court, County Clerk, Sheriff, County Treasurer, Register of Deeds, County Surveyor, Superintendent of Public Instruction, three County Commissioners, and such municipal township officers as are now provided for under the laws of the Territory of Oklahoma, except as in this Constitution otherwise provided."

Oklahoma Compiled Statutes of 1921:

"Section 9401. The Commissioners of the Land Office may make such detailed rules and regulations governing the leasing of the public lands of this State as to them seem proper, not in conflict herewith, and for the purpose of carrying into effect the provisions of this article."

"Section 9415. When any tract of the school or other public lands, granted to the State of Oklahoma under the Act of Congress known as the 'Enabling Act', is known by the Commissioners of the Land Office of the State to contain oil or gas, or where such lands are, by said Commissioners, deemed valuable for oil and gas purposes, such Commissioners shall enter of record in their office their finding, declaring that such oil or gas character exists, and further declaring that the oil and the gas deposits are segregated from the surface use and interest therein, and such segregation of such deposits shall conclusively withhold the same from sale, lease or other alienation, except as provided in this article.

"Section 9416. Each agricultural, timber, grazing

or other lease to any surface interest in land in which the deposits are segregated, as provided in the preceding section, shall reserve to the State, its lessees or grantees the right to drill and operate oil and gas wells on such premises, and the easement, use and right of way to enter upon and fully enjoy the mining right reserved in this article.

"Section 9417. The oil and gas interest described in this article in such lands may be leased by the Commissioners of the Land Office for oil and gas purposes to the same extent and in the same manner as a private owner of land in fee could, in his own right, execute a grant thereto, subject, however, to the following limitations:

"First. For a period not exceeding five years, with suitable provisions for preference right to release for a second term of five years at its expiration, at the maximum rate of rentals, royalties and bonuses that may be obtained therefor, at the time of such renewal.

"Second. Upon due advertisement and public notice of not less than thirty days, in such manner as the Commissioners may, by rule, prescribe.

"Third. Such leasing shall be done under public bids and awarded to the highest responsible bidder: Provided, that the Commissioners of the Land Office shall have power to reject any and all bids.

"Section 9418. The lease contract of the State with any lessee for oil and gas purposes shall stipulate, and the advertisement for bids for leasing such land shall specify, a fixed royalty, to be determined by the Commissioners of the Land Office, and in no event less than twelve and one-half per cent of the total output of such oil and gas, and in addition thereto any bonus offered for such lease, and shall also require a deposit of sufficient earnest money in the hands of the Commission as the Commission may

require to accompany each bid, with appropriate conditions of forfeiture for failure to comply with the terms and conditions of bidding upon such lands. All leases for oil and gas provided in this article shall contain a provision requiring the lessee to drill a sufficient number of wells upon the leased premises to offset the wells upon adjoining contiguous premises, and a further provision that a failure to faithfully operate the leased premises for oil and gas to as full an extent as individual and corporate premises are being operated within the general oil and gas field where such land is located, shall forfeit such lease to the State. No transfer or assignment of any lease shall be valid or convey any right in the assignee without the consent in writing of the Commissioners of the Land Office. The Board of Commissioners shall require a good and sufficient bond for the faithful performance of said lease and may make such additional rules and regulations covering same as are not specifically provided for in this article."

"Section 9422. The Commissioners of the Land office shall have plenary power and authority to enter their finding of record in their office, modifying, altering or vacating any order, finding or entry, and when any tract or parcel of land shall be proven to be valueless for oil or gas purposes, or such tract of land or the oil and gas field in which the same is situated shall become impoverished and exhausted, then such Commissioners shall enter of record their finding of such non-oil and gas bearing character, or of such exhausted or valueless condition for such oil and gas purposes, and when so entered of record by such Commissioners, the oil and gas character of such land shall conclusively terminate, for the purposes of this article. Upon premises leased for oil and gas purposes, no finding or other entry of record shall be made modifying, altering or vacating any order, finding or entry previously made until notice of not less than ten days shall be given by registered mail

to the last known address of such lessee, or by posting notice in writing in a conspicuous place upon the premises vacated by such new finding, order or entry.

"Section 9423. The proceeds derived in bonuses and royalties and from other inducements and considerations for the execution and operation of the oil and gas leases in this article provided shall be carried in the several funds for the use and benefit of which such lands were granted by the United States to the State of Oklahoma, and to the territory now comprising the area embraced within the said State, under the provisions of the Enabling Act, and any and all other Acts of Congress, for the uses and purposes, and upon the conditions, and under the limitations for which the same were granted; and the money resulting from such lease and from the operation thereof shall be handled, disposed of and used in like manner as the other moneys belonging to said several funds under the laws of this State."

"Section 9424. The Commissioners of the Land Office are authorized to lease for oil and gas purposes any of the school or other land owned by the State of Oklahoma, which such Commissioners may deem valuable for oil and gas, for the term of five years and as long thereafter as oil or gas may be produced therefrom in paying quantities, upon such terms and conditions and in such quantities as the Commissioners shall by rules and regulations prescribe. Each such lease shall provide for the delivery to the State of a royalty of not less than one-eighth part of the oil or gas produced from the leased premises, or in lieu thereof the payment to the State of the market value of said royalty interest, as the Commissioners may elect. Such leasing shall be made by public competition after not less than 30 days' notice by publication in two newspapers authorized by law to publish legal notices, one of which newspapers shall be published at the State capital, and the other in the

county where the land is situated. Such leasing shall be let by sealed bids and each lease awarded to the highest responsible bidder. Such oil and gas leases may be assigned only with the consent and approval of the Commissioners of the Land Office. Provided, that the Commissioners have the right to reject any and all bids.

"Section 9425. The Commissioners are empowered to segregate any of the school or public lands for mineral purposes which the Commissioners may, by order entered of record, determine to be valuable for oil, gas or mineral purposes, and each agricultural, grazing or other lease of the surface rights or interest in any land so segregated shall reserve to the State, its lessees or grantees, the right to explore, drill and operate for oil or gas on such lands, as well as the right to enter upon the said lands and enjoy the mining rights so reserved.

"Section 9426. All oil and gas leases executed by the Commissioners of the Land Office shall be for a term of five years and as long thereafter as oil or gas may be produced in paying quantities; provided, upon the forfeiture, or cancellation or surrender, or expiration of lease by reason of its termination on account of the five year limit provided for in the 'Enabling Act', or any other cause, the School Land Commissioners shall provide for the leasing of such land in the same way and in the same manner that the School Land Commissioners lease land which has never been leased. Provided, on such leases which are surrendered or which may expire or which have expired, the lessees or assigns shall have the value of the physical properties on such lease, which value shall be determined by a board of appraisers especially appointed by the School Land Commissioners for the appraising of physical property of leases. Provided, no physical property valuation shall be attached or considered in the making of a lease on a

tract consisting of more than 640 acres. If no well shall be completed upon any leased premises within one year from the date of the lease, the lessee shall pay to the State of Oklahoma an annual rental in advance of such sum per acre as the Commissioners shall prescribe in the lease, which payment shall operate to defer the completion of a well during the year for which such rental payment is made.

"Section 9427. All leases for oil and gas shall contain a provision to drill one well on each leased tract within one year from the date of such lease, or on failure to complete such well to pay an annual rental per acre as hereinbefore provided. All such leases shall further provide that the lessee shall drill a sufficient number of wells upon the leased lands to offset all producing wells upon any adjoining or contiguous lands, and a further provision that the failure of the lessee to diligently and in good faith operate the leased premises for oil and gas to as full an extent as other lands are operated in the general oil and gas field where such leased lands is located shall forfeit all rights of the lessee under such lease. Each lessee shall execute a bond to the State of Oklahoma with sureties to the approval of the Commissioners and in such sum as the Commissioners shall prescribe, conditioned for the faithful performance of the provisions of the lease and for the payment of all recoverable damages which such lessee may cause to the property, crops or rights of the surface lessee.

"Each lease shall further provide that in the event the State shall at any time operate a refinery for the refining of crude petroleum or the extraction of any of its products or by-products, the State shall have the preference right to purchase and take the production or output of any such oil or gas well at the prevailing market price thereof, upon the Commissioners serving written notice upon the owners of

any well of the purpose and readiness of the State to take such production.

"Section 9428. The Commissioners of the Land Office may adopt and promulgate appropriate rules and regulations for carrying into effect the provisions of this Act, but no restrictions or prohibitions against any bidder or prospective bidder shall be made other than as provided in this Act."

"Section 9430. All funds arising from bonuses, royalties or rentals for oil and gas leases shall be carried into and credited to the permanent funds for the use and purposes designated in the grant of such lands by Congress to the State of Oklahoma, and all such funds shall be kept, handled and used in like manner as other moneys belonging to said permanent funds."